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cover the amounts paid for peanuts which proved to be defective, where the evidence showed that those purchased under the first contract were inspected by the buyer's agent before shipment, but that those under a second contract were taken to fill out a car and were not inspected, it being agreed that the buyer could reject defective peanuts on inspection after receipt, an instruction to find for defendants if the jury believed the peanuts were inspected, unless they further found that some damaged ones were shipped by mutual mistake, though correct as to the peanuts sold under the first contract, was erroneous as to those sold under the second contract.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 660.]

2. Appeal and Error (§ 889 (2)*)—Complaint against Seller and Buyer's Agent May Be Considered as Amended to Dismiss as to Agent.—In assumpsit against the seller and the buyer's agent jointly for the purchase price of defective goods, where there was no evidence to sustain a joint recovery from the two defendants, but the question was not raised below, the Supreme Court will, in accordance with Code, § 6331, treat the complaint as having been amended to dismiss as to the buyer's agent, as the plaintiff had a right to do under section 6102.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 348.]

Error to Circuit Court, Southampton County.

Action by the American Peanut Corporation against the Newsoms Supply Company and another. Judgment for defendants, and plaintiff brings error. Reversed and remanded, with directions.

Jno. N. Sebrell, Jr., of Norfolk, for plaintiff in error.

W. H. T. Loyall, of Norfolk, for defendants in error.

SMITH-GORDON CO., Inc., *v.* SNELLINGS.

June 16, 1921.

[107 S. E. 651.]

1. Appeal and Error (§ 1011 (1)*)—Findings of Trial Judge Conclusive.—Under Code 1919, § 6363, findings of trial judge are conclusive on conflicting evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 656.]

2. Brokers (§ 55 (1)*)—Broker Who Is Procuring Cause Entitled to Commissions.—Where more than one broker is authorized by the owner of property to make a sale, the broker who is the procuring cause thereof is alone entitled to the commissions.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 641.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Law and Chancery Court of City of Norfolk.

Action by the Smith-Gordon Company, Incorporated, against W. E. Snellings. Judgment for defendant, and plaintiff brings error. Affirmed.

J. Edward Cole, of Norfolk, for plaintiff in error.

W. P. McBain, of Norfolk, for defendant in error.

INGRAM *v.* INGRAM et al.

June 26, 1921.

[107 S. E. 653.]

1. Descent and Distribution (§ 112*)—Advancements Valued as of Time When Made.—Property advanced should be valued as of the date at which the advancement was made, and when there is a parol gift of land, under which possession is taken, and a deed is executed at a later date, the advancement is to be treated as made, and accordingly valued, at the time of the parol gift.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 197.]

2. Descent and Distribution (§ 112*)—Agreement between a Father and Children as to Value of Property Advanced Is Conclusive.—Where a father and his children agreed upon the value of property to be advanced, at the time the advancement was made, this irrevocably established its value as an advancement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 194.]

3. Appeal and Error (§ 1022 (3)*)—Report of Commissioner Approved by Trial Court Should Not Be Disturbed on Appeal.—The report of a commissioner when the evidence has been taken in his presence is entitled to great weight, and such a report on the value of property based on conflicting testimony, and sustained by the trial court, will not be overruled on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

Appeal from Circuit Court, Pittsylvania County.

Suit by L. W. Ingram, Jr., against Geo. S. Ingram and others. From decree for defendants, plaintiff appeals. Affirmed.

Geo. T. Rison, of Chatham, for appellant.

Harris & Harvey, of Danville, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.